

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLINE OSWALD,	:	CIVIL ACTION
Plaintiff	:	
	:	No.
vs.	:	
	:	ASSIGNED TO:
STATE FARM MUTUAL AUTOMOBILE	:	
INSURANCE COMPANY and STATE	:	
FARM FIRE AND CASUALTY	:	
COMPANY,	:	
Defendants	:	JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendants, State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (hereinafter collectively “State Farm”), by and through its attorneys, Forry Ullman, hereby files the following Notice of Removal:

1. A Complaint in the above-captioned civil action was filed in the Court of Common Pleas of Lackawanna County, Pennsylvania, on February 6, 2018, and served upon State Farm by the Sheriff’s Department via Certified Mail received on February 12, 2018. The Complaint was docketed as Lackawanna County Court of Common Pleas No. 2018-CV-994. A true and correct copy of the Complaint is attached hereto as Exhibit “A”.

2. The Complaint alleges that Plaintiff Charline Oswald is an adult individual residing at 156 Vista Drive, Saylorsburg, Monroe County, Pennsylvania 18353. *Id.* at ¶ 1. It is further believed that Plaintiff remains a citizen of the Commonwealth of Pennsylvania, as of the date of the filing of this Petition for Removal.

3. The Complaint further alleges that Plaintiff Charline Oswald maintained an automobile policy of insurance with State Farm, which was in effect for the period of July 14,

2017 through January 14, 2018, covering a 2014 Dodge Avenger, owed by Plaintiff. Id. at ¶ 6 and 7.

4. Plaintiff contends that on November 11, 2017, Plaintiff was involved in a “deer hit motor vehicle accident” which caused extensive damage to her car. Plaintiff contacted State Farm to report the accident on the same day. Id. at ¶ 8, 9 and 10.

5. Plaintiff further contends that on or about November 14, 2017, Plaintiff received a letter from State Farm denying coverage under the automobile policy of insurance stating that the “(c)ompany records indicate the policy had been cancelled prior to the date of accident.” Id. at ¶ 11.

6. The Complaint avers that State Farm never sent Plaintiff any type of cancellation notice or termination notice for nonpayment. Id. at ¶ 12 and 14.

7. The Complaint further avers that subsequently, on November 15, 2017, Plaintiff received a Reinstatement Notice from State Farm stating that Plaintiff’s policy was reinstated effective November 11, 2017, at 12:01 a.m., which would allow coverage on the date and time of this loss. Id. at ¶ 16 and 17.

8. Plaintiff avers that State Farm “failed to make a reasonable offer to settle Plaintiff’s automobile insurance claim and recklessly denied coverage for the claim” causing Plaintiff to incur expenses, suffer unnecessary delay and hardship and sustain “consequential damages, including the time, expense, aggravation and distress of litigation, out of pocket damages, attorney fees, costs and hardship with regard to the presentation of Plaintiff’s claim and loss of interest in the proceeds caused by State Farm, unreasonable and/or bad faith delay in forcing to litigate this claim, and State Farm defending against its unfounded and/or improper defenses against Plaintiff’s damages.” Id. at ¶ 29 - 40.

9. The Complaint contains two counts: Count I for Breach of Contract; and, Count II for Bad Faith pursuant to 42 Pa.C.S. §8371.

10. Defendant State Farm is an Illinois corporation in the business of insurance, with its principal place of business located at One State Farm Plaza, Bloomington, Illinois 61710, at the time of the commencement of this action as well as at the time of the filing of this Petition for Removal.

11. Thus, for purposes of diversity jurisdiction, State Farm is a citizen of the State of Illinois.

12. State Farm is filing this Notice of Removal in that diversity of citizenship exists between Plaintiff (a citizen of Pennsylvania), and State Farm (a citizen of Illinois).

13. In addition, the amount in controversy exceeds the jurisdictional amount of \$75,000.00, because Plaintiff is demanding: judgment in her favor in an amount in excess of \$50,000.00, plus attorney's fees, interest, costs and such other relief as the Court deems just and proper in Count I for Breach of Contract; and, judgment in an amount in excess of \$50,000.00, plus attorney's fees, interest, costs and such other relief as the Court deems just and proper in Count II for Bad Faith pursuant to 42 Pa.C.S. §8371.

14. Section 8371 provides that a court may award punitive damages, interest, costs and attorney's fees if it determines that an insurer acted in bad faith toward the insured.

15. Although State Farm vigorously disputes punitive damages are warranted in this matter, punitive damages are properly considered in determining whether the amount in controversy has been satisfied. Bell v. Preferred Life Assur. Soc. Of Montgomery, Ala., 64 S.Ct. 5 (U.S. Ala. 1943); Henderson v. Nationwide Mutual Ins. Co., 169 F.Supp.2d 365, 368 (E.D.Pa.

2001)(attorney's fees, interest and "punitive damages are included in the amount in controversy if they are available to successful plaintiffs under a statutory cause of action")(*citing* Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990)).

16. Removal is timely under 28 U.S.C. §1446(b), because less than thirty (30) days have elapsed since service of the Complaint on State Farm.

17. State Farm will give written notice of the filing of this Notice to Plaintiff as required by 28 U.S.C. §1446(d).

18. A copy of this Notice will be filed with the Prothonotary of Lackawanna County, as required by 28 U.S.C. §1446(d).

WHEREFORE, Defendant, State Farm Mutual Automobile Insurance Company, requests that this action proceed in this Court as a Civil Action properly removed.

Respectfully submitted,

FORRY ULLMAN

Dated: 03/14/18

By: /s/ Gary A. Drakas
GARY A. DRAKAS, ESQUIRE
Attorney ID No. 73440
Attorney for Defendant
One Bethlehem Plaza
Broad and New Streets, Suite 400
Bethlehem, PA 18018
610.332-3400 / FAX 610.322.3401
gdrakas@forryullman.com